

Workers' Compensation Advisory Committee (WCAC)

Meeting Minutes
September 26, 2005

Introductions:

Present:

Committee Members:

Business Representatives: Amber Carter, Association of Washington Business; Jon Warling, Mon-Jon Orchards; Mike Sotelo, W.G. Clark Construction Company

Labor Representatives: Owen Linch, Joint Council of Teamsters No. 28; Dave Johnson, Washington Building & Construction Trades Council; Robby Stern, Washington State Labor Council, AFL-CIO

Self-Insured Employers' Representative: Katrina Zitnik, Costco Wholesale

Self-Insured Workers' Representative: Ellie Menzies, Service Employees State Council

Ex Officio Member: Tom Egan, Board of Industrial Insurance Appeals

Chair: Bob Malooly

Recorder: Laurie Jenkins

Presenters: Bob Malooly, Rich Wilson, Jon Sinclair, Jeanne Sears, Gary Franklin, Carl Hammersburg, Bill Vasek, Russ Redding, Tom Egan

Guests: Paulette Avalos, Amy Brackenbury, Janice Camp, Calhoon Dickinson, Nancy Dicus, Sarah Dylag, Dan Fazio, Lauren Gubbe, Mark Johnson, Dave Kaplan, Tom Kwieciak, Jill Reinmuth, Jeanne Sears, Vicky Smith

L&I Staff: Diane Finch, Gary Franklin, Kris Johnson, Vickie Kennedy, Kathy Kimbel, Jamie Lifka, Joshua Ligosky, Robert Malooly, Mark Mercier, R.T. Nelson, Russ Redding, Lisann Rolle, Frank Romero, Nichole Runnels, Jon Sinclair, Hal Stockbridge, Christine Swanson, Jean Vanek, Bill Vasek, Cheri Ward, Gary Weeks, Kathy Whisler, Rich Wilson, and Trista Zugel

Review/Approval of June 27, 2005 Meeting Minutes – Minutes were approved as written.

Business suggested the WCAC committee consider using a court reporter to record future meetings. She remarked that the Retro Advisory Committee now uses a court reporter for its meetings. While Laurie does a good job of capturing the essence of the meeting, she questioned whether a word-for-word record of the debate would better serve the committee.

Bob Malooly was concerned that members of the committee would not feel comfortable to freely speak their thoughts if a court reporter were present. He stated he would further check with the Director and the Attorney General's office.

Return-To-Work Services – Rich Wilson

After briefly summarizing his experience and credentials, Rich Wilson informed the committee about the new vocational improvement initiative. The agency is committed to preventing long-term disability by returning people to work as quickly and safely as possible. While many of the improvements over the years have increased the effectiveness of vocational services, there is still much to be done. The agency is focused on achieving the best possible outcomes as quickly as possible.

The three primary issues that the initiative will address include: misunderstanding about the purpose of vocational services, delays in obtaining needed services and vocational referrals that do not result in a usable outcome. These issues can result in frustration for the injured worker and increased costs to the system. To improve vocational services we are examining internal processes to determine where delays can be reduced, investigating new technology to automate processes and looking for ways to improve staff recruitment and reduce staff turnover.

To develop and share a clear message about vocational services, we are using the web site and brochures to get the message out to injured workers, physicians, vocational counselors and the employer community.

Labor asked if the agency has given any thought to using college counselors instead of relying on external vocational counselors.

Rich responded that using college resources made good sense and that the agency is currently working with college administrators to explore new ways of working together.

Labor applauded L&I's effort to improve vocational services, but was frustrated that more focus has not been placed on returning injured workers to appropriate work. Returning injured workers to meaningful work is a success story; returning injured workers to minimum wage jobs is not a success for anyone.

Bob affirmed that L&I is committed to prepare injured workers for the best job we can for them and to preserve their incomes. Rich informed the committee that steering committee will be formed and team members will be recruited in October 2005. By November 2005, he expects to construct a comprehensive overview so that pilot program opportunities will be identified by March 2006. In the meantime, the team will identify and pursue quick wins at every opportunity. He then stated he would like to form a WCAC Vocational Advisory Subcommittee to help analyze issues and to review potential pilot programs.

Business asked what type of feedback would be requested.

Labor asked how many people were needed for the subcommittee.

Rich responded he would like three and three to participate in monthly meetings, each lasting approximately four hours. Bob stated that active participation would be necessary to understand the stakeholder plans.

Labor suggested we instead consider two and two for the subcommittee.

Next we will identify our staff resources, identify the WCAC subcommittee members and form the project team. Committee members were invited to contact Rich if they had additional questions.

Improvements to Claims Telephone Call Response Times – Jon Sinclair

Jon Sinclair, Support Unit 2 Supervisor, informed the committee that four claims support units answer more than 10,000 telephone calls a month for the 25 L&I claims units. When the agency observed a sharp increase in the average time to answer calls, as well as in the number of abandoned calls during the period December 2004 through February 2005, Kathy Whisler was asked to tackle the job of reorganizing the support activities. As a result of her efforts in recruiting new supervisors, establishing uniform tasks and successfully staffing effective personnel in the units, the average time to answer calls went from nearly 11 minutes to 12 seconds in Support Unit 2. He explained that we went from over 400 calls abandoned a day to 13. The goal is zero abandoned calls. Staff morale is much improved and people are eager to join the newly formed teams now.

The Self-Insured Workers' Representative asked if content was affected.

Jon responded that customer service has not been impaired as a result of this process change. The injured worker needs to receive information from their claim manager, not from the support staff. Support staff answer the calls as fast as possible and contact the appropriate claim manager to get the caller the assistance they need. By answering calls faster, the number of calls are decreasing because callers are not hanging up and redialing.

Evaluation Plan for SHB 1691 (ARNP) and SB 6356 (PA) – Jeanne Sears, University of Washington

Gary Franklin introduced Jeanne Sears to the committee. Jeanne directed the committee to three handouts in their packets: an evaluation of SHB 1691 and SB 6356, a handout of her PowerPoint presentation, and Provider Bulletin 04-09, which discussed expansion of the function for Advanced Registered Nurse Practitioners and sole signature on initial report for Physicians' Assistants.

Jeanne explained that effective July 1, 2004, Physician Assistants can have sole signature on the Report of Accident or Physician's Initial Report for simple industrial injury claims, and ARNPs can independently perform the functions of an attending physician, except to rate permanent impairment. In accordance with SHB 1691 and SB 6356, the Department must evaluate the bills and report the effects of these bills on injured worker outcomes, claim costs and disputed claims to the legislature by December 1, 2006. The ARNP rule will expire on June 30, 2007, and the PA rule will expire on July 1, 2007.

Stakeholders have been contacted and are currently providing feedback. The evaluation focus includes: provider distribution and access, administrative efficiency concerning claim filing times, and post-implementation differences between provider types. Jeanne stated that they would not be able to look at injured worker satisfaction with various provider types. Briefly, the evaluation content will address the following questions:

Provider distribution and access:

- Who do ARNPs and PA serve and how many are injured workers? Are their patients different from the primary care physicians?
- What is the amount of L&I primary care contributed by ARNPs and PAs? Did this change after implementation?
- Did the legislation:
 - Affect the percentage of patients that went first to emergency departments versus providers in a clinic or office, or by geographic region?
 - Reduce the average time from the date on injury to the first medical visit by

geographic region?

Administrative efficiency: Did the bills reduce the average length of time from the first medical visit to L&I's receipt of the Report of Accident by region?

Differences between provider types after implementation:

- Were there differences between ARNPs/PAs and primary care physicians regarding specific quality indicators after implementation?

Quality:

- In length of time from the first medical visit to L&I receipt of Report of Accident?
- By provider type, what percent of claimants kept the same attending provider throughout the claim? [May be an indirect measure of patient satisfaction.]
- For occupational diseases, are there differences between attending provider types in how often and how quickly they file the Occupational Disease Work History Form?

Disputed Claims:

- Is there a difference in the number/percent of claims protested and appealed?
- Does this vary by whether the employer, patient or provider filed the claim?
- Does it vary by whether there was attorney representation?

Disability: Were there differences between ARNP's/PAs and primary care physicians regarding disability outcomes?

- Compare the number, size and percent of non-compensable and compensable claims.
- How likely are back sprains to end up in surgery?
- Did cumulative timeloss days vary?

Cost: Were there differences between ARNPs/PAs and primary care physicians?

- What are the average medical costs per claim by provider for non-compensable claims and compensable claims?
- Holding timeloss constant, were medical costs per claim different between provider types?

Utilization: Were there differences between ARNPs/PAs for selected services?

Jeanne then asked if anyone had questions.

Labor asked if there was sufficient time to include a satisfaction study if funding were allocated.

Gary Franklin responded that assuming the funds would not be received until July 2006, we could not do it.

Labor asked if funding was allocated immediately, would it be possible?

Gary stated it might be possible, since we are not talking about thousands of cases here. He was not certain the effort of including a satisfaction survey at this time would be worth the money. Providers would probably like it.

Labor assumed that injured workers would probably be fine with their care from ARNPs, but asked if there was a perception of a problem with no seeing primary care physicians?

Jeanne stated that injured workers are generally happy with whom they choose for assistance. She informed the committee that there will be one year for follow-up of the cost and disability outcomes.

Business asked how the evaluation will distinguish who signed the form?

Jeanne responded that bill records will be examined to make the determination.

The Self-Insured Workers' Representative asked if PAs would be included in COHEs?

Gary answered that they were starting to be included.

Business asked how the injured worker will know they have an option to see an ARNP?

Jeanne stated that in most physicians' offices the office support staff will inform patients they are seeing an ARNP. Bob informed the committee that the agency does not see a surgeon's note until the surgery occurs. It is up to the practice to inform its patients of the health care provider's training and qualifications.

The Self-Insured Workers' Representative stated that Group Health Cooperative always gives the patient a choice of selecting the provider.

Business asked labor if they cared if whether the injured worker sees an MD or an ARNP.

Labor responded that it was appropriate especially in rural communities to expand the authority of ARNPs because in some areas that is the only option for the patient. The ARNP does the work and sends off the paper work for signature. He stated that he has concerns, but in some cases expansion of the function makes sense.

Business reminded the committee that we are not trying to determine the standard of practice.

A second business representative recounted a personal story where stitches performed by an ARNP turned out to be substandard resulting in having an MD having to redo the stitches.

Tom Egan stated that he has observed cases where the injured worker does not realize they are be treated by a Physician's Assistant.

Business asked if the data will capture urban versus rural issues?

Gary answered yes.

Business asked if the evaluation has narrowed down the issues on which it will focus? Also, how will the report capture what we are doing already?

Gary stated we will look at what happens after the legislative action and focus on the big picture here.

Labor stated he understood that the bill permits ARNPs and PAs sign—a practice they are already doing. Since we will have good data, he would like the team to consider making a supplemental request for the evaluation tool to include a satisfaction survey.

Bob asked Gary Franklin to take a look at this issue and report back to him. Gary said we are looking at uncertainties, but he will estimate what we will need in terms of time and money to put an emergency clause together.

Opiates, Chronic Pain and Worker Safety – Gary Franklin

Gary informed the committee that we have observed increased deaths associated with prescription opioid use in the Washington State workers' compensation system. Using the department's database, he examined opioid prescription patterns for injured workers between 1996 and 2002 to see how commonly opioids were prescribed, if trends indicated that higher

dosages of more potent opioids were being used, and to ascertain if deaths among injured workers were attributable to the use of prescription opioids.

His study discovered that 32 deaths were definitely or probably a result of prescription opioids of the 55 deaths potentially related to accidental prescription opioid overdose. In these 32 cases, oxycodone was mentioned in 15 cases and methadone was mentioned in 23 cases. He also discovered a substantial increase in accidental poisoning deaths attributable to opioids. Given preliminary observations indicate that prolonged, high-dose opioid therapy may not be safe. Gary and Bob mailed a warning letter to all prescribing providers in the L&I system in February 2004 to carefully consider their use of opiate-based pain relievers. A copy of the letter is attached as the appendix to his published paper entitled, "Opioid Dosing Trends and Mortality in Washington State Workers' Compensation, 1996-2002."

Fraud and Prevention Program Update – Carl Hammersburg

Carl stated that employers have repeatedly indicated they want L&I to focus on fraud and abuse because they feel at a competitive disadvantage when competing against companies that operate in the underground economy and do not pay what they owe to L&I, Revenue and Employment Security. He directed the committee's attention to a draft 2006 Supplemental Decision Package for Employer Auditing Technology, which addresses the department's critical need for technological upgrades required by the unit in order to do a better job. He explained that the improvements listed in this package will update L&I's computer auditing system with current technology that will reduce duplication and manual entry of data by staff. The computer auditing system will be expanded to support alternative audit methods that will be less time consuming for employers and auditors, as well as track referrals. He stated the cost is estimated to be \$1.25 million. The initial cost is expected to be recovered in the first year through collections and will be a good return on investment.

Labor asked what effect this package will have on the Self-Insureds?

Carl stated this package will not have an effect on the Self-Insureds. Bob further remarked that the agency wants to do a better job. The last thing we want to do is hassle employers. Technology is clearly the way to go to accomplish this.

Business asked if we will only catch people working within the system?

Carl stated the savings will help on all audits, but the unit will be able to catch folks in the underground economy as well.

Business asked how the fraud unit develops its targets—through complaints?

Carl explained a wide range of activities are used to determine where investigations will be appropriate, including discrepancies with the IRS or Employment Security and anonymous calls and emails.

Business asked if information contained in Quick Books is confidential?

Carl stated the agency has not made a change in its business practices. Receiving data via Quick Books is an electronic form of the same information sent to the department on paper. Kathy Kimbel affirmed that working documents are indeed confidential, but that the results of the audit are public information. Bob informed the committee that the agency encourages businesses to let us know if an infraction is occurring. It is impossible to investigate everything, but we will investigate the larger issues. Carl said the unit is pleased to receive anonymous referrals. Anonymous referrals are taken very seriously; they provide a means of sharing information without risk to the person making the allegation.

Business asked to be reminded what the 2007 budget will look like.

Carl responded that our existing data warehouse is built around claims. The agency wants all data to be converted to an easy-to-use format, so that we do not need a programmer to access the information. We want to build a secure area for IRS checks. Bob reminded the committee that it is important to understand that in the past the agency did not do a good job in investigating fraud. With the establishment of Carl's unit we can now see what we need to do a good job on all sides. Our plan is to submit this supplemental request now and determine what more is needed at a later time. Gary Weeks stated that he believed what business was asking was whether the agency has a number value of the second part of the legislation. He said as soon as the information is available, the committee will be informed.

Business stated they want to provide assurances to good employers that they will not be negatively impacted by any new developments and asked how the good guys will be protected?

A second business representative stated he would be interested in knowing the criteria. He would like a formal format.

A third business representative inquired whether the unit expected to go past the four percent audit penetration rate?

Carl stated the best report from the IRS is that up to ten percent have positive return on investment and compliance. The net effect of the random audits is unknown.

Business asked how much it will cost—10 cents, 50 cents per dollar? At some point we need to figure this out.

Carl responded that he didn't know at this time, but he expects a 7.7 to 8.7 times the investment. The unit is currently bringing in \$8 for every dollar we spend. He reminded the committee that some investigations result in putting folks in jail, not with a monetary return.

Labor stated that a cost benefit analysis would be beneficial.

A second labor representative stated that we should expect to see the numbers drop over time because more folks will be playing by the rules as a result of efforts by the fraud unit. That alone should be a good indicator over the long term.

Business encouraged Carl to provide additional information as soon as it is available. She is interested in knowing how this package will balance out between employers and workers, so that she can discuss any impacts on employers or concerns with the employer community as soon as possible.

Reports:

Bob stated that Amy Brackenbury had requested permission to tape record the WCAC special presentation today. He had declined that request because we are not permitted to video tape a meeting without first getting written permission from everyone in the room. He confirmed that he and Bill will be available to answer any questions anyone might have on this subject. Further, he stated he would address the issue of using a court reporter for future WCAC meetings with the Director.

Bob informed the committee that Frank Romero, Program Manager for Retrospective Rating, announced his retirement effective the end of October. In addition, Kathy Kimbel, Program Manager for Employer Services, has indicated she is considering retiring next year. As a result, this is an excellent time to consider the redesign of Employer Services and Retrospective Rating.

Also, the small employer initiative and classification plans need work. We will keep the committee informed with our progress as we go along.

He next reported that an operational risk assessment study will be done to ensure that L&I has appropriate controls in place. With the redesign of several work groups and process improvements in the works, we might inadvertently cause the agency to have control issues. We want to fix any control issues ourselves, not wait for the auditors to detect them. The study is expected to be completed by mid-October. The committee will be updated as soon as the assessment is complete.

The department is currently preparing a summary that explains how workers' compensation premium dollars and interest income are spent. The summary is expected to be ready in a couple of weeks for distribution.

Labor requested the summary be emailed to the committee as soon as it is available.

Bob assured the members they would receive a copy as soon as it is available.

Bill Vasek provided a partial review of the last classification rating presentation. He reminded the committee that pure premiums are the ratio of loss/exposure for a given risk class. Expense costs and investment income offsets are excluded. The Medical Aid and Accident Funds each include a serious category and a non-serious category. Indicated pure premiums are the ratio of actual adjusted (losses/exposure) for a given risk class during the five-year experience period. Underlying pure premiums are the ratio of the expected (losses/exposure) for a given risk class during the experience period. The frequency and severity of smaller (and thus non-serious) claims are easier to predict, which is the reason serious and non-serious claims are separated. The expected loss for a given risk class during a five-year experience period is calculated by the following formula:

$$\text{Expected Loss} = \frac{\text{Underlying Pure Premium times}}{\text{Hours Reported During the 5-Year Experience Period}}$$

Class rates are based on five years of experience. The difference between the old and new credibility formulas depends on the size of the class. Small classes tend to have greater variability.

Regarding the new credibility, Business asked if we were socializing the cost? Don't we want the cost to be actual?

Bill said we are dampening (or smoothing out) more of the amount of change in pure premiums from year to year. We are not socializing the cost. Credibility has been used since 1912 and helps us to do a better job. Dampening (or smoothing out) pure premiums helps to keep rates stable for small classes and does not impact overall rate changes. Bob stated that our goal is to have stable rates, and made a comparison to homeowner's insurance. He then stated that further information regarding this subject will be provided in today's afternoon special meeting.

Business asked if there were other systems we could look at?

Bill responded that different systems have different credibility systems. Bob stated that we would be happy to explain the details further if the committee was interested.

Business asked if the auditors will be looking at this?

Bill stated he did not know.

The issue of changing the retrospective rating adjustment from three years to seven came up in 1998 in the JLARC Report. The agency plans to revisit this subject and report back to the committee.

Business asked what the timeframe was?

Bob said a time frame would be developed along with other issues the actuaries are addressing. The committee will be provided the results as soon as they are available.

Russ Redding next briefly discussed the type of claims often associated with long periods of timeloss. He explained that the five classes with the largest share of long-term disability claims include: restaurants, wood frame building construction, trucking, boarding homes and nursing homes. Sixty-seven percent of these claims are comprised of male workers. The average long-term disability claimant age is 41. The most common injuries include: sprains and strains and other ill-defined injuries to the back and shoulder, ankle fractures, carpal tunnel and bruises. Overexertion (lifting) was the leading cause of accident. For male claimants, back injuries are the largest category followed by shoulder injuries. Back injuries are the largest category for female claimants, followed by wrist injuries. Bob informed the committee that the agency has sent information to employers about reducing lifting hazards and has encouraged them to minimize lifting hazards. Russ invited the committee to contact him if they would like additional information.

Board of Industrial Insurance Appeals Update – Tom Egan

Tom presented a brief summary of fiscal year statistics of the last eight years depicted in the following graphs:

- *Appeals Filed and Granted:* In FY05, 13,385 appeals were filed, compared to 12,332 in FY04. The Board granted 8,014 appeals in FY05, compared to 7,610 in FY04. FY01 was the highest year for appeals with 13,615.
- *Department Reassumption Rate:* The reassumption rate has run fairly constant the last three years, decreasing slightly from 27.6 in FY04 to 26.7 in FY05.
- *Settlement Rate in Mediation:* Mediation is fairly effective at the Board. The settlement rate in mediation of 44.7% decreased slightly in FY05 compared to 47.7% in FY04.
- *Cases Assigned Per Month per IAJ:* Cases assigned per month remained fairly constant over the past three fiscal years: 10.1 in FY05, 10.4 in FY04, and 10.4 in FY03.
- *Active Caseload Average Per IAJ Per Month:* Active caseloads per IAJ increased from 46.3 in FY04 to 51 in FY05
- *Average Weeks to Completion:* Average weeks to completion decreased from 34.9 in FY04 to 33.7 in FY05. Tom stated the Board hopes to continue to improve.
- *PD&O Time Lag:* The lag time for hearing judges increased by two days in FY05, from 26 to 28 days.
- *D&O Time Lag:* The total time lag decreased from 84 days in FY04 to 66 days in FY05. The review judge time lag, however, increased slightly from 37 days in FY04 to 39 days in FY05.
- *Affirmance Rate:* Affirmance rates averaged 53.5% in FY05 compared to 53.1% in FY04.

- *Pending Appeals (Caseload):* Active appeals increased slightly from 5,119 in FY04 to 5,458 in FY05.
- *Cost Per Final Order:* Cost per final orders increased from \$1,077 in FY04 to \$1,138 in FY05. While the gross cost increased slightly, it is less than ten years ago (\$1,202).

Labor asked if the Board does a breakdown between State Fund and Self-Insured on affirmance rates?

Tom responded the Board did not prepare a breakdown, but that he thought the numbers were fairly similar.

Business asked if the Board participated in GMAP.

Tom stated that the Board completed a balanced scorecard each quarter and has a performance agreement with the Governor's Office with a focus on certain performance measures.

Labor asked for a definition of GMAP.

Bob explained that GMAP stands for Government Management, Accountability and Performance. Governor Gregoire created GMAP through Executive Order, and has promised to make it a centerpiece of her administration. GMAP is based on models used in Baltimore (where it's called "CitiStat") and New York City ("Compstat"). It is method in which performance reports and operational problems are discussed to come up with strategies to address them.

Business stated it would be helpful to hear what L&I is doing for GMAP.

Wrap-Up – Bob Malooly

Bob reminded the committee that the next quarterly meeting would be held on December 5 from 9 a.m. until noon in the Tukwila training room. He invited members to bring their calendars to confirm the 2006 meeting dates. The committee was asked to consider which issues they would like address in the upcoming year and to bring a list to the next meeting. Some of issues he suggested for consideration included: the claims process, the employer side of the business, medical care, prevention, and the fraud and abuse program.

The meeting adjourned.